IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal no.2046 of 2005

Capt Mohan M Deshmukh & anr .. Appellants
vs
Sangli Bank Ltd Pune ..respondent

A.V.Anturkar with Mr. Deshmukh for appellants

Mr Ashish Kamal i/b M/s V Deshpande & co for respondent

CORAM; A.M.KHANWILKAR J.

DATED 27.2.2006

P.C.

l. Heard the learned counsel for the parties. Perused the relevant documents on record. Only two questions have been canvassed before this court in the present appeal. First contention is with regard to the award of interest at the rate of l7.5% with quarterly rests as prayed by the respondent- plaintiff. Mr.Anturkar counsel for the appellants placed reliance on a copy of secured term loan agreement and a letter of acknowledgement. Relying on these two documents it was contended that in none of these documents rate of interest has been specified as l7.5% p.a with quarterly rests. On the other hand it has been described only as l7.5.% p.a. in the

respective documents. Mr.Anturkar, therefore contends that the trial court having failed to consider these documents while examining the issue of liability of the appellant to pay interest at the rate claimed by the respondent as can be discerned from the reasoning in para l9 of the impugned judgment, it will be appropriate that the matter is remitted to the trial court for reconsideration on the issue of liability to pay the interest as claimed by the plaintiff or only simple interest as is the case of the appellant. The argument seems to be attractive but clearly overlooks the evidence on record. The substance of the finding of the trial court in para l9 is that there is contractual rate of interest which is none other than l7.5.% p a. with quarterly rests. That is not only borne out from the documentary evidence on record but also oral evidence of the plaintiff as well as admission of the defendant's witness. The Promissory Note executed by the appellant dated l0.3.l989 reads thus:

" Exh 26

Rs l25000 sd/- sd/- l0.3.89---l9

On Demand,I Captain Mohan M Deshmukh Prop

of M/s Gaurishankar Gas Agency promise to pay The Sangli Bank Ltd or order,the sum of Rupees One lac twenty five thousand only together with interest on such from this date at the rate of l7.5% (Seventeen and half) per cent per annum with quarterly rests for value received.

Exh no. 26
RCS no.l464/95
Read and Admitted in evidence
Filed by plaintiff/deft below
exh no.2l date 24.9.02

sd/

M/s Gaurishankar Gas Agency

ADV-Dl/F 23/24
Kamala l,0000 l-8 Stamp sd/-proprietor

4th Jt C J J D Pune".

(emphasis supplied)

2. Relying on the above document the plaintiff asserted that they were entitled to claim interest at the rate of l7.5% p a with quarterly rests for value received. In the evidence of plaintiff's witness Vinayak Vasudeo Puranik in para l of his examination in chief with regard to the claim of interest has deposed thus:

> "I further say that the defendants hereinabove are enjoyed loan facility i.e.demand loan secured facility of Rs.l,25,000 with interest at l7.50% p.a. with quarterly rest compounding basis for business purpose i.e. for purchasing of truck and the same was given by the bank through its Erandawane Branch".

Indeed, this witness has been cross examined. Mr.Anturkar placed reliance on the following portion of the cross examination which reads thus:

> "At Exh 28 schedule I it is specifically mentioned that the demand loan was secured l,25,000 for 35 months at the rate of l7.5% and it was rate of interest. In term loan agreement Exh 28 the quantum of instalment is not mentioned.At Exh 28 schedule I it is not specifically mentioned whether rate of interest l7.5% for p.a.or p.m. or quarterly or what more. The attention of witness is drawn to Exh 32 dated

27.2.l993 letter of LAD and suggestion was given that prima facie on perusal of document it appears that it is for CC facility in response to that witness deny the suggestion and submitted that No and it is a term loan account".

3. What is overlooked by the learned counsel for the appellant is that the specific case made out by the plaintiff's witness that the defendants were liable to pay principal amount with interest at the rate of l7.5% p.a.with quarterly rests with compounding basis, remains unaffected. The attempt to cross examination referred to above is only to confront the plaintiff's witness in the context of documents at Exhs 28 and 32. These are documents titled as secured term loan agreement (Exh 28) and Exh 32 is a letter of acknowledgment dated 27.2.l993. That will not take the matter further. What is relevant to note is that although the defendant witness the appellant herein Capt M M Deshmukh in the examination in chief in para l3 came with specific case that he would be liable to pay interest only at the simple rate of l7.5% p.a. He was cross

examined. In his cross examination however,he has deposed as below:

> "On l0.3.l989 the bank had sanction a loan of Rs.l,25,000. The rate of interest was l7.5% p.a. at quarterly rest".

4. Mr Anturkar relies on the later part of the cross examination where the witness has disputed the position by asserting that the agreed rate of interest was l7.5% p.a. by simple mode and document at Exh 25 promissory note has been written subsequently. This submission clearly overlooks that in the earlier part of the cross examination, the question as was put to the defendant witness was that the bank had sanctioned loan of Rs.l.25 lacs on l0.3.l989 at the rate of interest at l7.5% p.a. with quarterly rest which position has been accepted.

5. In my opinion, in view of the documentary evidence on record, Exh 26 in particular, coupled with the evidence of the plaintiff,which supports the claim of the plaintiff,which evidence has remained unaffected, as there has been no cross examination to the case made out

by the plaintiff witness in para l of the evidence; whereass the defendant cross examined the plaintiff witness on the limited point as regards the contents of Exh 28 and 32 only and there is no cross examination regarding Exh 26 coupled with the admission of the defendant himself in the cross examination referred to above, I have no hesitation in taking a view that the conclusion reached by the court below that the appellant was liable to pay interest at the rate of l7.5% p.a. with quarterly rests is unexceptionable. Indeed, Mr.Anturkar may be justified in submitting that the trial court has not undertaken the exercise, which has now been done by this court. However, for the nature of evidence on record no fruitful purpose would be served by relegating the parties to the trial court. 6. The second contention raised before this court is that the court below has committed manifest error in directing the appellant to pay future interest at the rate of l7.5.% p.a. with quarterly rests from the date of filing of the suit i.e November l995 till its realisation. The counsel for the appellant would contend that there is absolutely non application of mind by the trial court to issue such directions for

there is no discussion in the impugned judgment in that behalf. Even this submission does not commend to me. The court below has considered the fact that it was a case of commercial transaction between the parties and in such a case plaintiff bank being bankers would be entitled for future interest at the contractual rate of interest. Applying this principle which is permitted by the provisions of section 34 of the C.P.C. as amended, in my opinion, the court below has rightly awarded future interest at the rate of l7.5% p.a. with quarterly rests from the date of filing of the suit till realisation. I am in agreement with the submission canvassed on behalf of the respondent bank that if the only controversy raised by the appellant was in respect of the rate of interest, there was no reason for the appellant to contest the proceedings upto this court. Besides, the evidence plainly answers the issue against the appellant. Understood thus the issue of future interest has been, in my opinion, rightly answered by the trial court requiring the appellant to pay interest at the rate of l7.5% p.a. with quarterly rests from the date of filing of the suit till realisation.

. Accordingly, appeal is devoid of any merits. Hence same is dismissed.

. The counsel for the appellant states that his client has deposited the amount in this court by way of demand draft for Rs.ll,46,02l dated 2l.2.2006 bearing no. 288385 drawn in favour of the Registrar of this court, which amount be withdrawn by the respondent bank on formal application made to the Registrar in that behalf. Ordered accordingly.